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September 29, 1995

SEP 29 1995

Rosalind K. Allen, Esq.
Chief, Commercial Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Re: **PR Docket No. 93-144; Revised Regulatory Framework for Licensing 800 MHz Specialized Mobile Radio ("SMR") Systems; Supplemental Comments of Pittencrieff Communications, Inc.**

Dear Ms. Allen:

This letter summarizes our meeting of September 29, 1995 in response to the announced recommendations of the Wireless Telecommunications Bureau ("Bureau") in the above referenced proceeding. Those recommendations were stated at a meeting held by the Bureau on September 18, 1995 pursuant to a Public Notice issued on September 12, 1995 (Report No. WT 95-23). A copy of this correspondence is being submitted to the Secretary's office for inclusion in the record of this proceeding.

Our client, Pittencrieff Communications, Inc. ("PCI") participated actively in this proceeding. PCI is one of the largest providers of specialized mobile radio ("SMR") service in the United States and will be significantly affected by whatever decision the Commission makes. PCI believes that, given the Commission's plain intent to restructure the SMR industry through the use of auctions and wide area licensing, many of the Bureau's recommendations are sound. However, there are certain elements of the Bureau's recommendations, noted below, that should be reconsidered before the full Commission has an opportunity to vote on this matter. In addition, several significant matters, also noted below, were not addressed at the September 18 meeting.

Extended Implementation Schedules of Existing Licensees- In discussing the rights of incumbent licensees who today employ the "upper" 200 SMR channels in the 800 MHz band, the Bureau stated that licensees who have been granted wide area

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authorizations in conjunction with extended implementation schedules will be able to retain those wide area licenses. However, the Bureau stated that these licensees will be required to "rejustify" their wide area authorizations. After Commission acceptance of the rejustification, wide area licensees will be allowed an additional two years, or the remainder of their authorized period, to build out their wide area facilities.

PCI believes there is no basis for this proposal. Wide area licensees proceeded with business plans based upon the construction of facilities under a timetable specified in their authorizations. It is unreasonable to require those licensees to raise the significant resources necessary to implement a wide area system in two, rather than, in some instances, five years. PCI is mindful that the Commission proposes a one year/voluntary, two year/mandatory relocation of licensees now operating in the upper 200 channels. This relocation should not affect wide area licensees' ability to construct their facilities over five years. BEA licensees will presumably be required to provide licensees with comparable facilities. BEA licensees will provide existing wide area licensees with substitute channels for any wide area site authorized within the BEA using the upper 200 channels. To the extent that a BEA licensee (who, presumably is not the wide area licensee itself) is able to require the relocation of an existing wide area licensee the wide area licensee can still have the remainder of the construction period authorized to construct the substituted channels. If a BEA licensee is unable to require the relocation of an existing wide area licensee, there is no reason that the wide area licensee should not continue to construct and operate under the terms of its authorization.

Movement of Incumbent Licensees- The Bureau proposes that if BEA licensees cannot relocate incumbent licensees, those incumbent licensees be limited in their ability to move their facilities to an area defined by their 40 dBu service contour. PCI believes that this proposal is too restrictive and will effectively make existing licensees hostage to tower site owners. PCI prefers that the Commission allow incumbent licensees to relocate facilities within their 22 dBu interference contour. Use of the 22 dBu contour definition will enhance an incumbent licensee's operational flexibility and will not affect the BEA licensee's operations. The incumbent licensee would be required to accept interference from a BEA licensee's newly authorized transmitter site that observed the incumbent licensee's original 22 dBu interference contour. However, as pointed out conclusively in other proceedings, the addition of new sites to fill in "dead spots" may extend a licensee's 40 dBu service contour and not increase the interference contour.¹

¹ See Petition for Reconsideration and Clarification of RAM Mobile Data USA Limited Partnership, Inc., filed June 5, 1995, FCC Docket No. 89-553.

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PCI is mindful that the FCC recently considered, and rejected similar arguments in determining the area within which 900 MHz incumbent SMR licensees can relocate transmitter facilities.² However, in that proceeding, the FCC also allowed incumbent licensees to license secondary sites on a primary basis. Incumbent licensees at 900 MHz will be permitted to operate throughout the overlapping and contiguous 40 dBu signal strength contours of their authorized multiple sites. Accordingly, 900 MHz SMR licensees have been accorded operational flexibility never enjoyed by 800 MHz SMR licensees. In order to begin to achieve some of that flexibility, the Bureau should adopt the modification proposed by PCI herein

Mexican Border Licensing- The Bureau proposes to make the upper 200 SMR channels available for wide area systems. However, as the Bureau is aware, there are fewer than 200 channels available for SMR operations in the Mexican border area. Accordingly, PCI proposes that Industrial/Land Transportation ("ILT") and Business Radio Service "pool" channels be available, to the extent already licensed, for inclusion in BEA licensing. Should the BEA licensee already be authorized for the use of those channels in the BEA, they would receive the ability to require that any remaining pool channel co-channel licensees relocate (consistent with the incumbent licensee protection criteria announce by the Commission). While this ability would normally only extend to the upper 200 SMR channels, the relative scarcity of channels in the border area militate in favor of PCI's proposed solution.

Timing of Relocation- The Bureau recommends a voluntary one year and mandatory two year relocation period for incumbent licensees. Relocation could occur if the BEA licensee could provide the incumbent licensee with substitute channels. Presumably, during the relocation period, the Commission will continue to process applications for assignment and transfer of control. Accordingly, BEA licensees may acquire, during or even after the relocation period, spectrum in the General Category or lower 80 SMR channels to which incumbent licensees can be relocated. The Commission should address this issue and specify from when (either when the Report and Order in this proceeding is effective or when the BEA licensee states) the relocation period begins to run.

Licensing on the Lower 80 and the 150 General Category Channels- The Bureau recommends that the Commission issue a Second Further Notice of Proposed Rule

² In the Matter of Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Order on Reconsideration and Seventh Report and Order, FCC Docket No. 89-553, released September 14, 1995 (FCC 95-395) at ¶ 41.

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Making to address the licensing of the lower 80 SMR and the 150 General Category channels. PCI reserves the right to comment further on this matter when such a Second Further Notice is issued. However, the Commission should recognize, in this proceeding, that those channels remain available to the BEA licensee to complement service provided over the upper 200 SMR channels. The future licensing of this spectrum should make it possible for BEA licensees to add the spectrum to their wide area authorizations.

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PCI is hopeful that the additional material submitted above will aid the Bureau in preparing its recommendations to the Commission. Should there be any questions, however, please let me know.

Cordially yours,



Russell H. Fox

cc: William F. Caton, Acting Secretary (for inclusion in FCC Docket No. 93-144)